

**LEGISLATIVE SERVICES AGENCY
OFFICE OF FISCAL AND MANAGEMENT ANALYSIS**

301 State House
(317) 232-9855

FISCAL IMPACT STATEMENT

LS 7971

BILL NUMBER: SB 466

DATE PREPARED: May 1, 2001

BILL AMENDED: Apr 29, 2001

SUBJECT: Implied Consent.

FISCAL ANALYST: David Hoppmann

PHONE NUMBER: 232-9559

FUNDS AFFECTED: X **GENERAL**
DEDICATED
FEDERAL

IMPACT: State & Local

Summary of Legislation: (CCR Amended) *Implied Consent*- This bill provides that a motorist impliedly consents to submit to a non-evidentiary portable breath test offered by a law enforcement officer. It specifies that a motorist who refuses such a portable breath test commits a Class C infraction.

Required Testing- It requires a law enforcement officer to offer either a non-evidentiary portable breath test or an evidentiary chemical test to a person who the officer has reason to believe operated a vehicle that was involved in a fatal accident or an accident involving serious bodily injury to determine if alcohol, a controlled substance, or a drug is present in the person's body.

It specifies that if: (1) the results of a non-evidentiary portable breath test indicate the presence of alcohol; (2) the results of a non-evidentiary portable breath test do not indicate the presence of alcohol but the law enforcement officer has probable cause to believe the person is under the influence of a controlled substance or another drug; or (3) the person refuses to submit to a non-evidentiary portable breath test, the law enforcement officer is required to offer an evidentiary chemical test to the person.

Effective Date: July 1, 2001.

Explanation of State Expenditures: (Revised) *Implied Consent*- The State would incur no additional administrative expenses as a result of the Class C infraction portion of this bill. Under current law, motorists impliedly consent to submit to an evidentiary chemical test offered by a law enforcement officer, and commit a Class C infraction if such a chemical test is refused. Typically, when a motorist refuses to submit to an evidentiary chemical test, he/she has already refused to submit to a non-evidentiary portable breath test.

Required Testing- The State Department of Toxicology (the Department) could experience a minimal increase in administrative expenses regarding the certification of additional evidentiary breath test instruments purchased by counties.

Background: Under current Indiana law, the Department is required to establish standards and regulations for the selection and certification of Indiana's 227 evidentiary breath test instruments and associated chemicals prior to their evidentiary use. Evidentiary breath test instruments weigh approximately 60 lbs. each and cost approximately \$6,500.

Each instrument is permanently situated at either a local police precinct or county jail within Indiana's 92 counties. Each county has at least one instrument, and large counties may have as many as 15-20 within their boundaries.

The Department currently certifies all instruments to compliance (with adopted standards) every 180 days and notifies the clerk of the respective county circuit court in writing of the certification of inspection. Certification is performed by the Department's six certified inspectors. The Department also provides support materials for the instruments, such as mouth pieces and instrument paper.

Explanation of State Revenues:

Explanation of Local Expenditures: (Revised) *Required Testing*- Local units of government that fund law enforcement agencies (e.g., cities, towns, and counties) could experience an increase in administrative expenses regarding the purchase of additional non-evidentiary portable breath test instruments. The specific effects would vary by law enforcement agency and would depend upon the number of patrol vehicles that are not currently equipped with non-evidentiary portable breath test instruments. (However, law enforcement agencies typically supply the majority of patrol vehicles with non-evidentiary portable breath test instruments.)

In addition, counties could experience an increase in administrative expenses due to the purchasing of additional evidentiary breath test instruments or due to providing additional evidentiary blood, urine, or other bodily fluid testing. The specific effects would vary by county, and would depend upon the number of law enforcement agencies operating within each county that increase evidentiary breath and/or chemical analysis in accordance with the provisions of this bill.

Background:

Testing Policy: Under current Indiana law, law enforcement officers are not required to offer non-evidentiary or evidentiary testing to individuals who operated a vehicle involved in a fatal accident or in an accident involving serious bodily injury. However, it is estimated that the majority of law enforcement agencies do so in accordance with local policy.

Individuals Suspected of Driving Under the Influence: When an individual is pulled over for suspected "driving while under the influence", several steps occur in the field before the actual evidentiary sobriety test is conducted at either the police precinct or county jail. They are as follows: 1) the individual is pulled over by a law enforcement officer; 2) various physical field sobriety tests are conducted with questions posed by the law enforcement officer; 3) a non-evidentiary hand-held sobriety test is conducted; and 4) if positive, the individual is taken to the police precinct or county jail for an evidentiary chemical analysis.

AlcoSensor III: The non-evidentiary hand-held breath test instrument that is most typically utilized by law enforcement agencies is called the *AlcoSensor III* sold by *Intoximeters Incorporated* which retails at approximately \$350 - \$500. (Price depends on factors such as quantity, length of contract, etc.) The *AlcoSensor III* has a life-span of approximately three to seven years.

There are currently 448 city and town police departments and 92 county sheriff departments in the State of Indiana.

Explanation of Local Revenues:

State Agencies Affected:

Local Agencies Affected: Law Enforcement Agencies.

Information Sources: Dr. Klaunig, Director, State Department of Toxicology (317) 274-7824; Doug Gosser, Indiana Sheriff's Association, (317) 356-3633; *Intoximeters Incorporated* at www.intox.com.